

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

OHIO CASUALTY INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 3:06-cv-977-MEF
	)	
MANIFOLD CONSTRUCTION, LLC, et al.,	)	
	)	
Defendants.	)	

**FIRST AMENDED ANSWER**

COME NOW the Defendants, Whittelsey Properties, Inc. and C.S. Whittelsey, IV (collectively referred to herein sometimes as “Whittelsey”), and in response to Plaintiff’s complaint for declaratory judgment, reserving the right to amend or supplement upon the discovery of additional facts, defenses and/or claims, amend their original answer (Doc. #23) stating as follows:

1. Whittelsey admits the allegations contained in paragraph 1 of Plaintiff’s complaint.
2. Whittelsey admits the allegations contained in paragraph 2 of Plaintiff’s complaint.
3. Whittelsey admits the allegations contained in paragraph 3 of Plaintiff’s complaint.
4. Whittelsey denies the allegations contained in paragraph 4 of Plaintiff’s complaint and demands strict proof thereof.
5. Although Whittelsey did file suit against Defendants, Manifold Construction, LLC, Jack Manifold and Melissa Manifold, in the Circuit Court of Lee County, Alabama, on or

about the 23<sup>rd</sup> day of February, 2005, Whittelsey denies the remaining allegations contained in paragraph 5 of Plaintiff's complaint and demands strict proof thereof.

6. Whittelsey admits the allegations contained in paragraph 6 of Plaintiff's complaint.

7. Whittelsey denies the allegations contained in paragraph 7 of Plaintiff's complaint and demands strict proof thereof. Furthermore, Whittelsey denies that Plaintiff is entitled to any of the relief requested in its complaint.

### **AFFIRMATIVE DEFENSES**

8. Whittelsey pleads the general issue.

9. Whittelsey asserts the affirmative defense of waiver of this proceeding, as Plaintiff withdrew its motion for limited intervention in the Circuit Court of Lee County, Alabama, Case Number CV-05-137, to submit "interrogatories to the jury relevant to the issue of [Plaintiff's] duties under two liability insurance policies to [Defendants, Manifold Construction, LLC and Jack Manifold]." See Exhibit B to Whittelsey's Brief in Support of Motion to Dismiss.

10. Whittelsey asserts the affirmative defense of lack of subject matter jurisdiction, as Plaintiff's waiver, as set forth above, allows the issues raised by Plaintiff in its complaint to only proceed forward in a state court action pursuant to Ala.Code 1975 § 27-23-2 ("Alabama's Direct Action Statute") in which action diversity cannot exist.

11. Whittelsey reasserts the factors listed in the case of Ameritas Variable Life Ins. Co. v. Roach, 411 F.3d 1328 (11thCir. 2005) as set forth in Whittelsey's motion to dismiss Plaintiff's claim.

12. Whittelsey asserts the Plaintiff has breached the enhanced duty of good faith.

13. Whittelsey asserts the Plaintiff has violated duties owed by an insurance carrier as set forth in *L & S Roofing Supply Co. v. St. Paul Fire & Marine Insurance Co.*, 521 So.2d 1298 (Ala. 1987).

14. Whittelsey asserts the Plaintiff has lost the right to assert non-coverage under policy exclusions because it breached the duty of enhanced good faith owed to Defendants, Manifold Construction, LLC and Jack Manifold.

15. Whittelsey adopts by reference all defenses pled by Defendants, Manifold Construction, LLC and Jack Manifold, in their answer. (Doc. #25).

### **JURY DEMAND**

16. Whittelsey demands trial by jury as to all issues raised by Plaintiff's complaint and Whittelsey's answer thereto.

Respectfully submitted this the 18<sup>th</sup> day of October, 2007.

WHITTELSEY, WHITTELSEY & POOLE, P.C.

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**DEFENDANTS DEMAND TRIAL BY JURY.**

/s/ Davis B. Whittelsey  
DAVIS B. WHITTELSEY

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document on the parties listed below electronically or by placing a copy of the same in the United States mail, postage prepaid, to their correct address on this the 18<sup>th</sup> day of October, 2007.

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